

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL PETER DURNEN,

Defendant-Appellant.

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UNPUBLISHED

December 9, 1997

No. 196977

Washtenaw Circuit Court

LC No. 94-003108-FC

Before: Smolenski, P.J., and MacKenzie and Neff, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). Defendant was sentenced to three to thirty-three years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues that error was committed when the investigating officer who interviewed the complainant opined that the complainant was telling the truth. Defendant argues that this testimony was so prejudicial that reversal is required. However, this testimony was elicited from the investigating officer on cross-examination by defense counsel for tactical reasons. Defendant may not assign error on appeal to something that his own counsel deemed proper at trial. *People v Barclay*, 208 Mich App 670, 673; 528 NW2d 842 (1995).

Next, defendant argues that the prosecutor improperly vouched for the credibility of the complainant and denigrated defense counsel. Again, defendant failed to object to these comments during trial. The failure to object during trial precludes appellate review of alleged prejudicial remarks by the prosecutor unless the prejudicial effect would not have been cured by a cautionary instruction and failure to consider the issue would result in a miscarriage of justice. *People v Whitfield*, 214 Mich App 348, 352; 543 NW2d 347 (1995).

A prosecutor may not vouch for the credibility of his witnesses to the effect that he has some special knowledge concerning a witness' truthfulness. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). However, prosecutors are free to argue the evidence and all reasonable inferences arising therefrom as it relates to their theory of the case, including the credibility of the witnesses. *Id.* at

282; *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996). In this case, the primary issue at trial was the credibility of the complainant. After reviewing the prosecutor's remarks as a whole we find no error requiring reversal. The prosecutor did not suggest that she had some special knowledge concerning the complainant's credibility. Rather, the prosecutor's remarks concerning the complainant's credibility constituted fair comment on the evidence. *People v McElhaney*, 215 Mich App 269, 284; 545 NW2d 18 (1996). Any error that did occur could have been cured by a cautionary instruction.

Affirmed.

/s/ Michael R. Smolenski  
/s/ Barbara B. MacKenzie  
/s/ Janet T. Neff